

Annual Report for 1998

California Department of Industrial Relations Division of Workers' Compensation

**Steve Smith
Director of Industrial Relations**

**Richard Gannon
Administrative Director
Division of Workers' Compensation**

**Peggy Sugarman
Chief Deputy Administrative Director
Division of Workers' Compensation**

<i>Executive Summary</i>	4
<i>Recent History</i>	6
1993 Reforms	6
Changes During 1998	7
<i>The California Economy and Workers' Compensation</i>	9
Labor Force	9
Shift in Industry Orientation	9
<i>Injury Rates and Trends</i>	9
Fatalities	9
Injuries and Illnesses	10
Days Away from Work	10
Type of Injury	10
Occupation	10
<i>Benefits and Costs</i>	10
Technical Note: Data Sources	10
Workers' Compensation Claims	11
Medical Benefits	12
Indemnity Benefits	12
Temporary Disability Benefits	13
Permanent Total Disability Benefits	13
Permanent Partial Disability Benefits	14
Fatality Cases	14
<i>Coverage for Workers' Compensation</i>	15
The Insurance Market	15
<i>Costs of Workers' Compensation Coverage</i>	17
<i>Division of Workers' Compensation</i>	18
Budget	19
Personnel	19
Claims Adjudication	19
Incoming Workload	19
Hearings, Conferences and Trials	20
Claims Adjudication Decisions	21
DWC Information and Assistance	21
District Office Services	21
Regional Centers	22
Information Materials	22
DWC Rehabilitation	23
DWC Disability Evaluation	24

DWC Audit and Enforcement	24
DWC Audit Unit Annual Summary for 1995-1998	27
DWC Claims	28
Uninsured Employers Fund	28
Subsequent Injuries Fund	28
DWC Legal	28
Ethics Advisory Committee	29
Petitions for Change of Physician	30
Reconsideration of Ratings	30
Other DWC Initiatives	31
Construction Industry Collective Bargaining Agreements	31
Carve-out Participants	31
DWC Research and Evaluation	32
DWC Managed Care	34

Executive Summary

California's workers' compensation system changed dramatically during the 1990s. With the passage of reform legislation during 1989 and 1993, continuous implementation of regulatory and administrative changes led to progress toward the goals of reducing overall system costs, improving the efficiency of the program, and increasing benefit levels. Problems remain in the areas of benefit adequacy and equity, and of system efficiency.

After several years of rapid growth in the late 1980s and early 1990s, workers' compensation premium costs in California fell significantly from 1993 through 1998. Insurance costs that were approaching five percent of payroll in 1993 dropped first with a legislatively mandated 7 percent reduction as part of the 1993 reform act, and a further reduction of 12 percent in minimum rates declared by the Insurance Commissioner in November 1993. In 1994 minimum premium rates were reduced further—the largest reductions in history—a drop of 16 percent effective October 1. These decreases foreshadowed elimination of the minimum rate law, effective January 1, 1995. Since open rating began, yet not necessarily because of it, a combination of reduced injury and claims rates, price competition, and some reductions in the scope of the law have driven the average employer premium rate to levels last seen in the mid 1970s.

While employer premium rates have fallen, benefit levels for disabled workers have increased. Temporary disability benefit levels, as mandated by the statutory changes, have risen sharply—from a maximum of \$224 per week in 1989 and \$336 per week in 1993—to a current maximum of \$490 per week. Currently, California's maximum benefit covers approximately 75 percent of the average weekly wage in the state. This is a significant change from the pre-1993 reform level, when California's temporary disability payment ranked in the bottom two of the 50 states. Despite the improvement, California still ranks 42nd in wage replacement rates for temporary disability.

The changes in 1989 were characterized by a desire to raise benefit levels by financing them through increased system efficiencies. In 1993 the goals were more closely related to controlling costs. In the wake of the reform legislation, the Division of Workers' Compensation and other affected agencies implemented sweeping changes in the law and administrative process. At that time, most public attention was on getting costs under control. Access to certain benefits, such as vocational rehabilitation, was pared down or capped in price. Broad definitions of injury and eligibility were somewhat narrowed for psychiatric stress cases, and post-termination injury cases were curtailed. Certification and monitoring of managed care organizations and other initiatives during 1994 began the task of controlling medical costs in California's workers' compensation.

In addition, units within the Division of Workers' Compensation were targeted for administrative improvements. The Disability Evaluation Unit concentrated on reducing large backlogs of cases seeking consultative ratings. The Rehabilitation Unit shifted toward more responsibility for resolving disputes. The Claims Adjudication Unit began to address means of reducing unacceptably long delays between requests and actual dates of hearings and trials.

The mandated changes in the 1993 law were intended to save \$1.5 billion per year, half of the savings paying for increased benefit levels and the rest reducing employers' costs in the system. The cost savings were expected to be accomplished through better management of medical care, reductions in fees paid for medical-legal evaluation reports and the numbers of them allowed, capping case costs for vocational rehabilitation, stricter standards of eligibility for psychiatric injury claims, and reductions of litigation through early intervention by state information and assistance officers.

Corollary savings were expected from workers' compensation reforms that affect other government agencies. The Division of Occupational Safety and Health was expected to use funding generated through the reform act to set up units to target workplace safety inspections of the most hazardous workplaces, and to assure that workers' compensation insurance carriers have effective programs of loss control consultation for employers.

The period since 1993 has seen dramatic reductions in the reported numbers of injuries and new claims, and in the systems costs paid by employers. From 1990 to 1997, the last year for which injury frequency statistics are available, the rate of injuries leading to time away from work dropped 45 percent. It now appears that the expected savings have been exceeded. Employer costs which were approaching \$11 billion per year are now below \$9 billion. Much of the current attention of the system relates to assessing and proposing action regarding the adequacy of permanent disability benefits. The challenge for the future is maintaining access to high quality medical care and adequate compensation after workplace injury, without letting costs get out of control.

Recent History

Recent reform of the workers' compensation system began in 1989, when the Legislature enacted a series of changes that signaled a desire to begin controlling runaway costs and to reduce fraud and abuse. The legislative goal was to redesign the system so that injured workers were assured of adequate and timely compensation, the regulatory structure of workers' compensation insurance was reformed, and a link was renewed between state mandated occupational injury/illness prevention programs and compensating injuries that occurred.

1989 Reform

As a result of the 1989 reform effort, the Division of Workers' Compensation was formed from the previous Division of Industrial Accidents. Organizational and regulatory changes included:

- An Audit Unit within DWC to monitor and regulate, through fines and other sanctions, insurance company performance.
- A toll free telephone number in the Information and Assistance Unit to handle questions from injured workers.
- A new Claims Unit responsible for the Uninsured Employers Fund and Subsequent Injuries Fund.
- Reorienting the Rehabilitation Unit's efforts away from job retraining programs of questionable value and toward encouraging employers to modify the workplace so that injured employees could come back to productive work.
- Improving the Disability Evaluation Unit's capability to provide objective assistance in establishing the level of permanent disability, and thereby assist state referees and judges in settling disputes efficiently and fairly.
- Outside the aegis of DWC, establishing an independent Industrial Medical Council to satisfy calls for a regulated medical and medical-legal profession.
- Establishing a Commission on Health and Safety to approve grants to employer and employee organizations for implementing injury and illness prevention programs.

However, over the next several years political attention remained focused on reforming a system in which employer costs continued to escalate, while injured workers received temporary disability benefits at rates that were exceeded by nearly every other state. Among cost drivers attracting the most attention were: escalating costs of the vocational rehabilitation benefit; rising costs of medical-legal examinations which appeared out of control because of a self-inflating measure for paying bills; and a medical fee schedule that did not cover many emerging and expensive technology-based procedures and allowed unchecked use of certain medical services.

1993 Reforms

In the early 1990s the Legislature passed several bills which began the process of addressing these concerns. In July 1993 a wide range of system changes were enacted with the intention of reducing the number of claims in the workers' compensation system as well as average costs per claim. To reduce the number of claims, new tools were added to curtail fraud, to make changes decreasing the number of post-termination psychiatric injury cases, and to implement strategies

that prevent injuries. The goal of reducing costs per claim was expected to be achieved by introducing managed medical care techniques, by lowering the number and costs of medical-legal evaluations, and by capping the costs of vocational rehabilitation.

As a result of these reforms, the state's responsibilities increased in virtually every area of the workers' compensation system. DWC information and assistance officers are now increasingly relied upon to give injured workers help on all aspects of claims, including rehabilitation cases, and information guides are being developed and disseminated.

Since the 1993 changes, DWC has been overseeing the operation of medical providers offering managed care, and has been revising the medical fee and medical-legal fee schedules. The division has also begun pilot programs combining the medical aspects of workers' compensation with group health coverage. The demands for medical care cost reduction and control programs have apparently been mediated by overall lower costs in workers' compensation, yet the experience of these programs is extremely valuable for assessing their effectiveness.

In 1993 the division was also mandated to revise the permanent disability rating schedule which governs payments to permanently impaired workers. A new schedule encompassing broad changes in the nature of occupations and types of injuries has been in effect since 1997. Much research and debate regarding permanent disability benefits characterize the past few years.

In addition to its own responsibilities, DWC is also involved in assuring that related agencies accomplish the objectives of reform. The 1993 legislation decreed deregulation of the premium rate-setting process for workers' compensation insurance. Competition has helped drive down rates over the last few years. But along with price competition among workers' compensation insurers, there may be greater pressures on claims examiners, loss control consultants and others. Care must be taken to assure availability of workers' compensation coverage for all sizes and types of employers, at a reasonable price. Through its regulatory and oversight functions, the division can assure that claims administrators meet standards of claims processing and information provided to injured workers.

Other reforms permit groups of employers to self insure their compensation liability for the first time, and allow for alternatives to the formal dispute resolution process of the Workers' Compensation Appeals Board for certified construction contractors operating under a collective bargaining agreement. Many of these functions entail monitoring and oversight responsibilities within the division or associated programs of the Department of Industrial Relations.

Another important policy change of the 1993 reforms was reconfiguring the Commission on Health and Safety from a grants making organization, oriented toward production of educational materials, to an eight-member labor-management evaluative Commission on Health and Safety and Workers' Compensation.

Changes During 1998

The year 1998 was a year of change, bringing new law and regulations in California's workers' compensation system. There was clarification of the general prohibition against settling or

commuting vocational rehabilitation services unless all compensation was at risk.¹ Private firefighters were assured the same workers' compensation protections as those employed by a public agency.² Protections were enacted against improper use of individually identifiable information held as public records.³ Workers' compensation judges, officially renamed referees in 1993, were now to be workers' compensation administrative law judges.⁴ They were also formally placed under the oversight of the Code of Judicial Ethics.⁵ The medical fee schedule was mandated to include physician assistants and nurse practitioners.⁶ After several years of near-sunsetting of the law, the Legislature permanently added acupuncture to the list of medical treatments available to injured workers.⁷ Other laws were put into place.⁸

Regulatory changes were made in several programs, clarifying the provision of vocational rehabilitation services⁹ and changing audit regulations to attempt a refocus of resources.¹⁰ Also, responding to a governor's executive order, benefits from the Uninsured Employers Fund and Subsequent Injury Fund, both originally intended to protect injured workers regardless of immigration status, were to be withheld from aliens.¹¹

¹ Vocational Rehabilitation Services, SB 1965, Chapter 524. Settlement or commutation of prospective vocational rehabilitation services is not allowed, except upon finding that there are good faith issues that if resolved against the employee would defeat the employee's rights to all compensation.

² Firefighters, AB 2173, Chapter 617. Firefighters employed by a private entity are entitled to the same workers' compensation protections as those employed by a public agency.

³ Privacy of Records, SB 1430, Chapter 624. With respect to public records covered under the Public Records Act, "individually identifiable information" may not be provided to any person or entity who is not a party to the claim unless that person or entity is identified and states the reason for the request. If the purpose of the request is related to pre-employment screening, the Administrative Director must notify the person about whom the information was requested that it has been provided.

⁴ WCJ New Formal Title, SB 453, Chapter 448. The new name for former workers' compensation judge or referee is workers' compensation administrative law judge.

⁵ Judicial Ethics, AB 2164, Chapter 95, and SB 453, Chapter 448. All workers' compensation referees must follow the Code of Judicial Ethics.

⁶ Official Medical Fee Schedule, SB 1940, Chapter 388. Services provided by physician assistants and nurse practitioners must be included in the official medical fee schedule.

⁷ Acupuncturists, AB 204, Chapter 440. Acupuncture is now added to the list of available medical treatment provided to injured workers.

⁸ Work experience education, SB 1817, Chapter 541. An educational agency may elect to provide workers' compensation coverage to registered student apprentices, or, for up to three months, to students paid a cash wage or salary by a private employer in supervised work experience education or cooperative vocational education. Public Employees: Death Benefits, AB 2342, Chapter 770. The limitation on death benefits in Labor Code Section 4707(a) does not apply to patrol members, as defined in Government Code Section 20390 of PERS.

⁹ CCR 10122, 10125.2, 10125.3, 10126, 10127, 10131.1, 10132, 10132.1, 10133.1, 10133.2.

¹⁰ DWC Audit Regulations, CCR 10106, 10106.5, 10107, 10108, 10111.1, 10113.

¹¹ UEF and SIF Benefits to Aliens, CCR 15740, 15741.

The California Economy and Workers' Compensation

Labor Force¹²

In 1985 approximately 12 million Californians were in the labor force and employed, of which 10.8 million were in nonagricultural labor. By 1990 overall employment had grown to 14.3 million. Growth then stalled and by 1993 overall employment had fallen back to 13.9 million. Since then, increasing growth has pushed up total employment to 15.3 million in 1998. (Chart 1) The unemployment rate for the same period began at 7.2 percent in 1985, dropped to a low of 5.1 percent in 1989, then steadily rose to 9.4 percent in 1993. The rate has now fallen for five years and currently stands at 5.9 percent. (Chart 2)

Shift in Industry Orientation¹³

A large portion of the growth in the California labor force in recent years has been in the service industry. From 1985 to 1997, manufacturing employment actually decreased in the state, from 2.0 to 1.9 million, while the service sector increased from 2.6 to 4.1 million. While employment in the service sector increased from 25 to 31 percent of the total, the manufacturing share fell from 19 to 14.5 percent. Wholesale and retail trade increased over 470,000, government increased 350,000 and construction was up 120,000. The shift from blue to white collar employment affects the nature and types of injuries seen in the state's work force. The nature of work force hazards also shifts within broad categories, as more jobs involve high technology, different hazards, and telecommuting. (Chart 3)

Injury Rates and Trends

The state Division of Labor Statistics and Research (DLSR), in conjunction with the federal Bureau of Labor Statistics, uses surveys of a stratified sample of California employers to estimate the incidence and frequency of occupational injuries and illnesses statewide. At the present time, there is no compilation of first reports of injury by employers or doctors. The division also maintains a program to document the number and causation of occupational fatalities in the state.

Fatalities¹⁴

At least 600 Californians die on the job each year. Two out of five of these persons die in transportation-related injuries. About 200 a year die from assaults or violent acts suffered on the

¹² Employment and unemployment rate
http://www.dof.ca.gov/html/fs_data/stat-abs/tables/c1.xls

¹³ For more detail on employment trends in California, visit these Web sites maintained by other California state agencies: http://www.dof.ca.gov/html/fs_data/stat-abs/tables/c3.xls
 By industry: [http://www.calmis.cahwnet.gov/file/indproj/cal\\$tb2.htm](http://www.calmis.cahwnet.gov/file/indproj/cal$tb2.htm)
 By occupation: [http://www.calmis.cahwnet.gov/file/occproj/cal\\$f&g.htm](http://www.calmis.cahwnet.gov/file/occproj/cal$f&g.htm)
Top ten growth areas
 By industry: [http://www.calmis.cahwnet.gov/file/indproj/cal\\$tb2.htm](http://www.calmis.cahwnet.gov/file/indproj/cal$tb2.htm)
 By occupation: [http://www.calmis.cahwnet.gov/file/occproj/cal\\$f&g.htm](http://www.calmis.cahwnet.gov/file/occproj/cal$f&g.htm)

¹⁴ <http://www.dir.ca.gov/DIR/S&R/occinj1995-96index.html>

job. Approximately another 50 each die from falls, contact with objects and equipment, and exposure to harmful substances or environments. In a typical year, 10-20 persons perish in fires and explosions.¹⁵ While the 1996 statewide numbers went below 600 for the first time in five years, all would agree that the record could stand significant improvement. (Chart 4)

Injuries and Illnesses

By every available measure, there has been a reduction in reported cases of occupational injury and illness in California during the years since 1990. From 1988 to 1997, the rate of disabling cases, involving lost workdays and days away from work, declined 45 percent in California. In mining and manufacturing the rate declined over 50 percent. In the fast growing service sector, California's lost workday rate declined 41 percent over the past decade. (Chart 5)

Construction, transportation and public utilities continue to be the most dangerous working environments in terms of injury frequency. Despite the large decreases of recent years, each year over 4 percent of the workers in these industries lose at least a day of work from an occupational injury. (Chart 6)

The most recent statistics available to study the demographics of injured workers are from 1996. Sixty-six percent of injured workers were male. (Chart 7) Nearly three-quarters were under 44 years of age, 14 percent under age 24. (Chart 8) About 11 percent of reported lost time injuries happened to those who had been on the job under three months, with a full 30 percent having under one year of service. One-third of those injured had been on the job between one and five years, and 38 percent longer than five years. (Chart 9)

Days Away from Work

Approximately 27 percent of workers who experience lost time due to an injury stay out 1-2 days, while another 18 percent are out 3-5 days. Approximately one-fourth of injured workers are out of work 6-20 days and 6 percent are out from three weeks to a month. Almost one-quarter of injured workers are still away from work a month after their injury. (Chart 10)

Type of Injury

The most common lost time injuries are to the trunk, including upper and lower back, accounting for more than 70,000 lost time cases per year. These are followed by 45,000 disabling upper extremity injuries and 36,000 lower extremity cases. (Chart 11)

Occupation

More than 70,000 private sector operators, fabricators and laborers suffered disabling injuries in 1996 in California, along with 37,000 technical, sales and administrative workers, 32,000 production, craft and repair workers, and 29,000 service workers. (Chart 12)

Benefits and Costs

Technical Note: Data Sources

¹⁵ <http://www.dir.ca.gov/DIR/S&R/occinj1995-96index.html>

The estimates of injury frequency and incidence rates of the Division of Labor Statistics and Research are supplemented by other data that focus on claims activity. Not all job-related injuries become claims against an employer or insurer, and it is argued that some claims are filed where there are no occupational injuries.

There is currently no single reliable source of information on the number and types of claims for workers' compensation in California. The Workers' Compensation Information System (WCIS) being developed by DWC will serve that vital purpose when it begins collecting and compiling information later this year. Until then, in order to make estimates it is necessary to procure and compile data from several different sources.

The Workers' Compensation Insurance Rating Bureau of California (WCIRB) regularly publishes information that aggregates the claims experience for insured employers.¹⁶ The state Office of Self Insurance Plans (SIP) compiles annual report information from several thousand self insured employers in both public and private sectors. Their published information is generally restricted to figures on the cost of medical care and indemnity benefits for self insurers and does not count the number of injuries. The DWC Audit Unit receives an Annual Report of Inventory (ARI) of workers' compensation claims from each claims administrator, and uses this information to identify and select sample sizes for audits.¹⁷ The insurance industry supported California Workers' Compensation Institute (CWCI) surveys its members quarterly to estimate the incidence of new claims and to look at trends over time.¹⁸ And the state Workers' Compensation Appeals Board (WCAB) offices see cases which, for one reason or another, need state assistance, oversight, or dispute resolution.

Workers' Compensation Claims

DWC estimates that in the insured sector of the market, claims have been cut by a third, dropping from over 900,000 per year in 1990 to just over 600,000 in 1996. (Chart 13) Total statewide employment for the two years is very comparable. Projecting these estimates in the insured sector to the entire work force, it appears that claims in California have dropped from approximately 1.3 million per year to about 900,000. In the insured sector, claims costs (the total of medical care, death benefits and indemnity costs for permanent and temporary disability) are approximately \$4 billion per year. (Chart 14)

The total employer cost of these claims plus overhead and operating expenses currently stands at approximately \$9 billion. (Chart 15) Workers' compensation cases can be categorized by types of benefits received. *Medical only* cases are ones in which no indemnity or lost time payments are made, meaning either the injured worker only had medical expenses, or the disability lasted less than three days and thus involved no other payments. *Temporary total* cases are those in which a person is hurt and requires medical attention, is off work for more than three days and collecting lost time payments, and after a period off work returns fully to the prior job without any remaining disability. *Permanent partial* cases usually include both medical and temporary total disability payments, and also involve a remaining and compensable disability after the healing

¹⁶ Annual Bureau Bulletin on Policy Year Data, usually around April.

¹⁷ Reports of inventory are collected each year by April 1 for the previous calendar year.

¹⁸ See Claims Monitoring Survey, CWCI, quarterly, summarized at <http://www.cwci.org>

phase has ended. For the relatively small group each year of permanently and totally disabled, who will not return to work in any capacity, there is an ongoing lost income benefit. And for the dependents of those killed on the job, there are survivors' benefits and funeral allowances.

Workers' compensation benefits are of three major types: medical care to relieve the effects of work-related injury, income benefits to replace loss of wages or wage earning capacity, and rehabilitation benefits to help pay for training and rehabilitation costs when a person cannot return to prior employment after an injury.

Medical Benefits

In 1996 the costs of workers' compensation medical care in California were about \$3 billion. (See Chart 16. Note: Cost figure in chart for insured payment in 1996 is at first report and can be expected to grow as claims mature.) Of this amount, approximately half went to doctors, one-quarter went to hospitals, one-seventh reimbursed patients for their direct payments with 6 percent paying for medical-legal evaluations and 4 percent for pharmacy services.¹⁹ (Chart 17)

Medical expenses are a part of nearly every workers' compensation case, and currently comprise about 29 percent of the system costs. Another 39 percent covers indemnity benefits and vocational rehabilitation services, and 32 percent covers the costs of administration of benefits—including loss adjustment expenses, insurer overhead, operations, commissions and brokerage, profit, taxes and general expenses. Looking only at benefits, medical services take 42 percent and indemnity benefits including vocational rehabilitation 58 percent of all benefits.

Among physician speciality areas, California's payments go to: physical therapists, 21 percent; orthopedists, 21 percent; family practice, 16 percent; chiropractors, 16 percent; clinics, 19 percent; and radiology, 7 percent.²⁰ (Chart 18)

In the insured sector, workers' compensation medical benefits cost between 0.6 and 1.4 percent of payroll during the period since 1977. (Chart 19)

The number of medical only cases dropped 25 percent between 1989 and 1996. (Chart 20) Because indemnity claims fell even faster, medical only claims now are approximately 69 percent of the total number of claims, up from 62 percent in 1990. On average in California, medical only cases now cost about \$450 apiece. In the inflation-adjusted figures of 1982 dollars, these claims cost about \$275. (Chart 21)

Indemnity Benefits

The chart (Chart 22) indicates the overall breakdown of costs on the indemnity side for a recent year. Benefits paid out for permanent partial disability awards were nearly the same as those paid out for temporary disability.

¹⁹ Estimated from data on insured populations. See WCIRB, California Workers' Compensation Losses and Expenses, June 1997.

²⁰ Estimates based on reported physician speciality, WCIRB, Workers' Compensation Losses and Expenses, June 1997.

Temporary Disability Benefits

In 1972 the National Commission on State Workers' Compensation Laws recommended that states index their workers' compensation benefit levels to the state's average wage. In this way, benefit levels would stay constant through inflationary times. Currently 44 states, but not California, set them this way for temporary total disability.²¹ The National Commission also recommended that states adopt a standard of 100 percent of the state average weekly wage; 34 states meet or exceed that standard. California ranks tied for 42nd among states on the replacement rate of the maximum benefit. (Chart 23)

The reforms of 1989 and 1993 granted significant increases in benefit levels for temporary total and fatality cases, and for some permanent partial disability cases. In 1990 temporary total disability benefits were \$224 per week, while the state average weekly wage was \$473. The maximum benefit was replacing less than half of lost income for the average injured worker. The 1989 reforms contained a two-step increase in the temporary disability rates, raising the maximum to \$266 in 1990 and \$336 in 1991, a 50 percent total increase. Without legislation to change them, the maximum rates stayed level until a three-step increase was included in the 1993 reform act. In July 1994 maximum rates rose to \$406; a year later they were increased to \$448, and in July 1996 they were raised to the present \$490 per week. (Chart 24) As a percentage of the state average weekly wage, the temporary disability benefit rose from under 50 percent in 1989 to approximately 80 percent in 1996. Without any further benefit level increases, this percentage has now fallen to about 75 percent as average wages have grown. (Chart 25)

Temporary disability cases in the insured sector are down from 180,000 to 110,000 per year since 1990, a decrease of 39 percent. The average cost of a temporary disability case has gone from around \$1600 in 1982 to over \$3700 in 1996, including both medical and indemnity costs. In inflation-adjusted dollars, the cost has risen to about \$2300. (Chart 26) The 1996 increase is in part due to the increases in benefit levels for temporary disability in 1995 and 1996.

Permanent Total Disability Benefits

Weekly payments in permanent total disability cases in California are the same as those for temporary disability, currently up to \$490 per week for injuries on or after July 1, 1996. Permanent total disability is often not recognized at the beginning of a claim. The table below shows how the number of cases seen as permanent total disability increases as the time from injury progresses—the first report for a given year occurs six months after the close of policy year, the second and third reports at one year intervals after that.

²¹ The states that set maximum levels by statute rather than an automatic adjustment are New York, Minnesota, Tennessee, Georgia, Alaska, Arizona and California.

Number of Permanent Total Disability Cases, Insured Employers			
Policy Year	First Reporting	Second Reporting	Third Reporting
1989		386	489
1990	194	311	429
1991	143	291	440
1992	132	247	377
1993	105	198	343
1994	128	231	386
1995	137	263	
1996	122		

Approximately 400 persons in the insured sector, or 600 statewide, become permanently and totally disabled from job-related injuries each year.

Permanent Partial Disability Benefits

Maximum benefits paid for permanent partial disability depend on the rating assigned; for disabilities rated under 15 percent, the benefit ranges from a minimum of \$70 to a maximum of \$140, a level that has been in effect since 1984. The 1989 reforms created a new tier: for those with over 25 percent disability, the maximum rate rose to \$148 per week. The 1993 reforms further subdivided the partially disabled into a total of four groups. Currently those with disabilities rating under 15 percent still get \$140 maximum, those with 15 to 25 percent receive a maximum of \$160 per week, those with 25 to 70 percent disability receive \$170 per week, and those with ratings above 70 percent get \$230 per week during the period of disability. (Chart 27) Disabled workers at this level are also eligible for a life pension of as much as \$154 per week.

The number of permanent disability cases in the insured market has declined nearly 50 percent in the past five years, with the largest annual decreases in 1992 and 1993. Currently there are approximately 85,000 such cases per year from insured employer work forces, with an annual cost of approximately \$3.5 million. These cases account for the overwhelming majority of costs of workers' compensation; since approximately 1987, permanent disability cases have accounted for about 85 percent of all benefit costs. (Chart 28)

Fatality Cases

Benefits in fatality cases are according to the number of dependents: Currently the family of a fatally injured worker leaving three or more total dependents receives a maximum of \$160,000 plus a burial expense of \$5,000. Death benefits for single dependents are now \$125,000. Per Labor Code Section 4702(b), death benefits are payable in installments in the same manner and amounts as temporary disability indemnity. Where there are one or more dependent minor children, death benefits beyond the maximum amounts continue at the temporary disability rate until the youngest child reaches age 18.

According to frequency and cost statistics published by the Workers' Compensation Insurance Rating Bureau, covering insured employers only, fatality cases are costing an average \$132,000 each, with about \$115,000 in indemnity or survivors' benefits and \$17,000 in medical care costs. These figures are from first estimates on policy year 1996 claims. Projecting from the amount of death benefits to dependents of insured employees, approximately \$75 million per year is paid out for all fatality cases in California. (Chart 29)

Fatalities—Insured Employers Only			
	1996 1st Report	1995 2nd Report	1994 3rd Report
Number of Claims	393	406	454
Incurred Indemnity	\$ 45,198,648	\$ 41,344,240	\$ 43,158,468
Incurred Medical	\$ 6,708,068	\$ 5,430,259	\$ 4,885,862
Incurred Total	\$ 51,906,716	\$ 46,774,499	\$ 48,044,330
Indemnity per Case	\$ 115,009	\$ 101,833	\$ 95,063
Medical per Case	\$ 17,069	\$ 13,375	\$ 10,762
Total per Case	\$ 132,078	\$ 115,208	\$ 105,825

Coverage for Workers' Compensation

Virtually all California employers are covered by the workers' compensation laws. Private employers must buy insurance coverage from a licensed insurer authorized to sell the coverage, or establish an approved self insurance program through the Office of Self Insurance Plans. Employers buying insurance are generally relieved from liability for workplace injuries, and liability is assumed by the insurance carrier.

The Insurance Market

Until recently, California's workers' compensation insurance rates were regulated by the Insurance Commissioner under the minimum rate law which stated that "an insurer shall not issue, renew, or continue in force any workers' compensation insurance under a law of this state at premium rates which are less than the rates approved or issued by the Insurance Commissioner."²² Under that system the Commissioner, through its statistical agent, the Workers' Compensation Insurance Rating Bureau, gathered and analyzed premium and losses data, classified businesses, did actuarial projections, assessed market conditions and competitive forces and determined final, fully developed, premium rates that included all the costs of benefits and administrative overhead.

The reform act of 1989 created an academic commission to study the workers' compensation insurance market, the insurance ratemaking process in California, and the relative effectiveness of ratemaking systems in other states.²³ In 1992 the Rate Study Commission recommended and in

²² Insurance Code Sections 11736 and 11737 of Division II, Chapter 3, Article 2, in effect through 1993.

²³ Insurance Code Section 11746.

1993 the Legislature adopted, effective January 1, 1995, the system currently in use which is known as open rating or competitive ratemaking. Under open rating, the Commissioner sets recommended, nonmandatory pure premium rates that are expected to cover the costs of benefits and loss adjustment expenses. Other administrative overhead and expenses are to be added by individual companies.²⁴

More than 100 private for profit insurers and one public nonprofit insurer sell workers' compensation insurance coverage in California. The State Compensation Insurance Fund is the largest carrier in the state, currently writing about 21 percent of the insured market. According to the Workers' Compensation Insurance Rating Bureau, the market share of the top few insurers has increased incrementally over the period beginning just before open rating. In 1994, 43 percent of the market went to the top five carrier groups; by 1997 it was up to 48 percent. In 1994 the top 20 groups took 79 percent of the total trade, and by 1997 the top 20 handled 87 percent of the market. (Chart 30)

Calendar Year	Top 5 Insurers	Top 6th to 10th	Top 11th to 20th	Top 20 Insurers
1994	43 %	17 %	19 %	79 %
1995	41 %	19 %	21 %	81 %
1996	43 %	18 %	21 %	82 %
1997	48 %	18 %	21 %	87 %

Traditionally, approximately two-thirds of total payroll in the state has been covered through insurance policies, while the remainder is through self insurance. The portion of payroll insured through insurance rose slightly from 1994 to 1996, from about 66 percent to nearly 70 percent of the total. (Chart 31) Most of the decrease in the self insured market share was in the public sector, as many public employers took advantage of low insurance rates. State agencies may also be considered "permissibly uninsured" for workers' compensation.²⁵

Profitability of workers' compensation insurance carriers, as measured by the National Association of Insurance Commissioners, has fluctuated greatly in the past decade. (Chart 32) During the 1988 to 1990 period, workers' compensation insurers in California had profit levels of nearly three times the national average. Profit margins fell to equal or less than the national average for 1991 and 1992, then jumped in 1993 to a return on net worth of over 15 percent. With deregulation and open competition, California insurers have experienced lower than average margins since 1994, and in 1997 had the lowest return of any state. From 1988 to 1997, California insurers averaged a return on net worth for workers' compensation of 9.4 percent, compared to a rate of 8.0 percent for all insurance lines combined.²⁶

²⁴ Insurance Code Section 11730 et seq.

²⁵ Labor Code Section 3700 begins "Every employer except the state shall secure the payment of compensation in one or more of the following ways..."

²⁶ National Association of Insurance Commissioners, "Report on Profitability by Line by State in 1997." (December 1998)

Costs of Workers' Compensation Coverage

The total cost to California's employers for workers' compensation can be estimated by adding together the premium costs for insured employers and the benefit and administrative expense costs for self insurers.²⁷ Information is available on public self insured employers only for the period beginning 1994. System costs peaked in 1993 when the total expenditure for insured and self insured employers was approximately \$11 billion. By just two years later, it had dropped to about \$8 billion. Currently employer cost is between \$8.5 and \$9.0 billion. (Chart 33)

Among insured employers and using the base of paid costs in 1998, the breakdown of costs is as follows. Medical care takes about 29 percent of the total, and indemnity costs about 37 percent. The remaining 34 percent is for administrative overhead and expenses. (Chart 34)

Summary of Paid Workers' Compensation Costs	1996	1997	1998
Insurance Overhead/Expenses	32.3 %	33.0 %	34.2 %
Temporary Disability	15.0 %	14.6 %	14.0 %
Permanent Total Disability	01.1 %	01.2 %	00.8 %
Permanent Partial Disability	15.8 %	15.5 %	16.1 %
Life Pensions and Death Benefits	01.2 %	01.2 %	00.9 %
Vocational Rehabilitation	06.1 %	05.8 %	05.3 %
Medical Costs - Physicians	14.4 %	14.7 %	16.3 %
Medical - Hospitals	06.8 %	07.2 %	07.6 %
Medical - Other	07.4 %	06.8 %	05.0 %
Totals	100 %	100 %	100 %

Chart 34a shows a more complete breakdown of the administrative overhead and expenses of California workers' compensation insurers during 1998.

Aggregate employers' costs of workers' compensation dropped after 1993 for two years. Since that time there has been growth in these costs—most of the increase in premium is driven by wage increases, growth in the work force, and the movement from self insurance to insurance. As expressed in dollars per hundred dollars of payroll, equivalent to a percentage of payroll, the costs were still falling in 1997 and perhaps into 1998. Average premiums in 1998 are just over half of what they were in 1993, and are now the lowest since the mid 1970s. (Chart 34b)

²⁷ For purposes of estimating ultimate employer cost, this document uses an administrative overhead and expenses add-on of 15 percent of costs.

Division of Workers' Compensation

The Division of Workers' Compensation monitors administration of workers' compensation claims, attempts to minimize disputes, and provides administrative and judicial services to assist in resolving disputes that arise in connection with claims for workers' compensation benefits.

Responsibility for the operations of the California workers' compensation system is split between the Division of Workers' Compensation and the Workers' Compensation Appeals Board. In 1965, the Administrative Director of the Division of Workers' Compensation was given the responsibility for overseeing the "conciliation, advisory, educational, medical and rehabilitation services" of the system, as well as for furnishing the WCAB with quarters, equipment & supplies, the recruitment and supervision of workers' compensation judges and the provision of administrative support. This allowed the Workers' Compensation Appeals Board to concentrate on judicial deliberations in contested cases, and retain the authority for adopting rules of practice and procedure for judicial proceedings.

Over the years, other units were added based on legislative changes. The statutes mandating vocational rehabilitation benefits required the Administrative Director to create a Rehabilitation Unit in 1975. The next year, Information & Assistance officers were added to provide the workers' compensation community and injured workers with help in navigating through the workers' compensation system.

The two major workers' compensation reforms of 1989 and 1993 provided additional programs and responsibilities. The Audit Unit was created to audit claims administrators to insure the proper management of claims, and the Managed Care Program was created to certify health care organizations to provide treatment for injured workers under a voluntary managed care system. New mandates required the creation of fee schedules for vocational rehabilitation providers and interpreter services, in addition to the responsibility for creating a fee schedule for in-patient hospital services and pharmaceuticals. The Administrative Director also has ongoing responsibilities for revising the medical treatment fee schedule and the medical-legal fee schedule.

The Legislature, concerned over conflicting reports of workers' compensation costs and the adequacy of benefits to injured workers, also mandated that the Administrative Director create a workers' compensation information system. The system will not only provide needed information to policy makers but will replace paper submissions of Employer First Report of Injury and Physician First Report of Injury with electronic submissions using standards set by the International Association of Industrial Accidents Boards & Commissions.

The new programs and responsibilities created a need for additional funding and positions within the Division. These needs have been addressed with the submission of several major budget change proposals. Changes in law have also increased the complexity of issues that are presented in the litigation process, requiring funding for additional judges, information officers, disability raters, and support staff. The budget increases, however, were also accompanied by rising costs for facilities and other overhead expenditures, and exacerbated by "across the board" reductions resulting from a scarcity of General Fund dollars in the early 1990's. These fluctuations

presented particular challenges, and prompted the Division to explore ways of decreasing overhead costs while increasing efficiency.

After an external review of its business process, DWC made changes in its organizational structure to facilitate the goals of improving public service. The changes now being implemented include opening three regional centers, beginning with San Bernardino, to receive all general incoming calls to the division, to provide information and assistance to callers, and to perform disability ratings for unrepresented injured workers. Each of these changes is planned to assist in resolving disputes without litigation. The district office staffs are then freed up to support litigated cases. The restructuring plan also includes transfer of supervision of some staff from separate unit managers to local presiding judges, and forming a headquarters unit to evaluate the work product in the district offices, identify problem areas, develop training curricula and set policy for assigned functions. The first stage of reorganization began in November 1998.

Budget

The budget for the Division of Workers' Compensation and the Workers' Compensation Appeals Board was raised significantly after the 1989 reform and given another boost after the 1993 legislative changes. Since fiscal year 1994-95, the budget has remained at approximately \$90 million for the agencies. (Chart 35)

Personnel

Division staff work in 25 locations around the state. Most employees are involved in adjudication of disputed workers' compensation cases as judges, legal counsel, hearing reporters, clerks, and disability evaluation specialists. Information and assistance officers in each office help injured workers, employers and others understand the system and directly help workers who are not represented by private attorneys. Rehabilitation specialists in most offices oversee development of plans designed to help injured workers get back to work. Teams of the Audit and Enforcement Unit oversee the process by which claims are paid and attempt to ensure that proper benefits are delivered accurately and in a timely manner. A headquarters staff includes unit managers, attorneys, health care specialists and policy analysts.

There are more than 1000 employees in the DWC/WCAB. (Chart 36) The number peaked at just over 1200 authorized positions after the 1993 legislation gave DWC added responsibilities for administration, although these positions were never completely filled during the state recession. Approximately two-thirds of the DWC staff are assigned to the claims adjudication unit, which holds hearings and trials and supervises the settlement and stipulation process of disputed cases. Information and assistance officers are the next largest group with 9 percent, followed by disability evaluators and Rehabilitation Unit staff with 7 and 6 percent respectively. (Chart 37)

Claims Adjudication

Incoming Workload

The Division of Workers' Compensation has seen some reduction in volumes of new cases filed, requests for hearings, and hearings held during the past four years. New filings have dropped 23 percent, although a large segment of this reduction is due to fewer separate cases involving liens for medical care payment. The number of requests for hearings through a *Declaration of*

Readiness to Proceed has stayed more constant, only falling 5 percent over the period. The number of hearings held, however, has gone down by over 100,000 during this period.

Calendar Year	Total New Filings	Declarations of Readiness	Hearings Held
1995	242,557	242,642	344,854
1996	212,710	245,392	285,665
1997	197,599	232,742	254,012
1998	187,959	230,653	238,666

Sources:

DWC/WCAB Online Data System: New Filings (Report 10); Declarations of Readiness (Report 13 - Quarterly); Hearings (Report 20).

The composition of new filings at the WCAB has recently changed. Much of the reduction is in the number of new filings for settlement approval. Nearly no new filings involve pre-applications, and in the past two and a half years the number of cases filed as original compromise and release and original stipulations with request for award have decreased. (Chart 38) The number of new applications for adjudication have remained relatively stable during these last 30 months.

Approximately one in five new case filings is by an injured worker not represented by an attorney, *in pro per*. In 1998 there were 40,089 pro per filings, down from the 42,940 in 1997. (Chart 39)

In 1998 there were over 230,000 requests for hearings filed with the Workers' Compensation Appeals Board, a decrease of about one percent from the prior year. A Declaration of Readiness to Proceed must be filed in order to request a hearing before a workers' compensation judge. There has been a small decrease in the numbers of such declaration filings during the past few years, but not the same dramatic decreases as seen in injury rates. (Chart 40)

Hearings, Conferences and Trials

In 1998 there were 174,549 conferences set for hearing and 64,117 cases set for trials, for a total of 238,666 formal hearings before workers' compensation judges in California. This is a reduction of 6 percent from the prior year. It appears that most of the decrease is from a reduction in the number of continuances and second conferences and trials. The number of initial conferences (Labor Code Section 5502) dropped only 1.2 percent from the prior year, and number of initial trials was down 2.6 percent. (Chart 41)

Though the length of time between request and hearing has been substantially shortened in the past few years, there is still much room for improvement. The system goal is to get cases to conference within 30 days of a Declaration of Readiness to Proceed and to trial within 75 days.

In the fourth quarter of 1996, it took an average 78 days from request to scheduled hearing, and 184 days to scheduled trial; only 14 percent of hearings were held within 30 days of request, and only 15 percent of trials within 75 days. By the end of 1998, these times had been cut to 62 days for a conference and 121 days for a trial, and 24 percent of conferences and 29 percent of trials were held within their respective time goals. (Chart 42) On average, there were 1.53 hearings per closing case in 1998, compared to 1.47 in 1997. The number of formal trials per case stayed constant at approximately 0.54 during this time.

Claims Adjudication Decisions

There were 153,886 closing decisions made in 1998, a 6.4 percent reduction from 1997. Over 57 percent of cases were closed with a compromise and release settlement, 33 percent were closed with a stipulated finding and award. Fewer than one in ten cases were closed with a judge's finding and award or finding and order. (Chart 43)

By the end of 1998, compromise and release agreements were being finalized within an average of 75 days of the request; in the first quarter of 1997 these had taken over 100 days. For stipulated settlements, the time to final decision dropped from 73 to 50 days during this period. Findings and awards decisions were issued, on average, 314 days from hearing request in the first quarter of 1997, and an average of 228 days by the last quarter of 1998. (Chart 44)

Information and Assistance

District Office Services

The **Information and Assistance Unit** provides a continuous program of information and assistance to employees, employers, labor unions, insurance carriers, physicians, attorneys and other interested parties concerning the rights, benefits and obligations under California's workers' compensation laws. This unit plays a major role in reducing litigation before the Workers' Compensation Appeals Board. The offices are often the first contact between injured workers and the DWC, either by phone or in person.

During the 1998 calendar year the 46 information and assistance officers at district offices and headquarters responded to more than 392,000 phone calls, handled over 42,000 letters from the public, and assisted another 53,000 injured workers in person. The unit also assisted 35,000 workers by facilitating a medical evaluation of permanent impairment.

The unit's activities are supplemented by a centralized toll-free number. Since May 1993 the division has provided pre-recorded information messages and a way to request forms and other printed information from DWC. This advanced system allowed the division to handle multiple calls simultaneously, and currently gives information to as many as 1000 callers daily, a vast improvement over the 40 to 50 calls per day that were previously answered on the 800 number. During 1998 the toll-free information and assistance line handled approximately 240,000 calls. Approximately two-thirds of calls were seeking information on injured worker benefits and claims processes, while 11 percent sought information on workers' compensation insurers, 9 percent on employer rights and responsibilities, 5 percent on medical care fees and information for providers, 5 percent on how to report fraud or complain about claims handling, and 3 percent on locations of WCAB offices.

Regional Centers

DWC is establishing three regional centers to handle the bulk of initial and general information telephone contacts. In the past, individual district offices had usually one or two information and assistance officers whose job responsibilities involved dealing with persons directly at the counter, speaking with them on the phone, answering correspondence, and conveying information accurately and courteously. Because in-person contacts, often for persons in the midst of litigated claims, assumed urgency over phone calls, contact by phone was a frustrating experience to callers, especially newly injured workers with many inquiries. Callers were often shunted to a menu-driven general information service or to voice mail, or got busy signals, or were put on long holds.

The regional centers are intentionally staffed to handle the peaks and valleys of call volumes, and to have real persons answering all phone calls during expanded office hours of 7:00 a.m. to 6:00 p.m. A new personnel classification, trained program technician, provides initial and general information and can assist callers in getting some specific information on their case. Journey-level information and assistance officers and disability evaluation specialists also staff the regional centers to provide specialized services to incoming callers.

Information Materials

In response to legislative mandates, the Information and Assistance Unit has developed and is distributing new information pamphlets and packets to employees, including information on other state and federal rights for disabled persons. Division staff are also working closely with the Commission on Health and Safety and Workers' Compensation and their research and education consultants to produce other worker education materials and useful guides to the system.²⁸

Information and Training Outreach

Due to the broad changes brought about by the 1993 reform, DWC considered ways to instruct the workers' compensation community on regulatory and statutory changes that would affect claims handling. The first DWC Educational Conference given in 1993 in five geographic locations was so successful that it has become an annual event. DWC is preparing for its seventh conference in February and March of 2000 in two locations. These programs extend over two days and feature courses on updated case law, audit procedures, new regulations, medical report writing, use of fee schedules, rehabilitation, and other changes that have occurred over the prior year.

Partnering with the International Workers' Compensation Foundation, these programs boast enrollment of over 900 participants. Most of the training is given by DWC staff experts, supplemented with guest speakers from the Industrial Medical Council, the Workers' Compensation Appeals Board, the Commission on Health & Safety & Workers' Compensation and from the community.

²⁸ See, for example, http://www.dir.ca.gov/dir/OS&H/CHSWC/Injured_Worker_Factsheets.html

DWC Rehabilitation

The Rehabilitation Unit determines services needed to help injured workers return to suitable gainful employment when unable to work in their former jobs, and resolves disputes regarding rehabilitation benefits and services.

The division distributes a pamphlet entitled *Help in Returning to Work – 1994*, available in English and Spanish, to help workers understand their rights and obligations in the rehabilitation process, as well as identify available remedies in the event of a dispute.

In 1998 the Rehabilitation Unit opened 23,804 new files and reopened another 2513 cases. Of cases filed for plan approval, 6,216 were approved unmodified with no determination by the unit, and another 3,481 were approved with a determination. The Rehabilitation Unit disapproved 1,828 filed plans. Of the files closed, 5,430 workers returned to work in a job corresponding to their rehabilitation plan, while another 305 completed their plans with work in a job other than that in the plan objective. Another 8,237 workers completed their rehabilitation plan but were not working at the time of completion. Rehabilitation services were terminated prior to the plan in 37 cases, and while in the plan for another 815 persons. The open caseload decreased from 66,049 to 60,013 files during the year.

Regulations regarding the rehabilitation program were revised during 1998. Commonly used rehabilitation terms, such as “modified work” and “alternate work,” were defined. Entitlement of employees to living expenses, English language training, vocational rehabilitation temporary disability, and vocational rehabilitation maintenance allowance have been clarified. The Rehabilitation Unit procedures for determining the cost effectiveness of rehabilitation plans outside of California was also addressed. New timeframes for parties to file position statements and for the Rehabilitation Unit to issue determinations are also covered in these regulations.²⁹

As a result of legislative changes in 1997 (AB 237), the counseling fee schedule was changed to allow the qualified rehabilitation representative (QRR) greater flexibility within the \$4500 cap during evaluation of vocational feasibility and plan development. Specifically, subject to an overall limit of \$4500:: a) up to \$3000 may be spent on vocational evaluation, assessment of vocational feasibility, initial interview, vocational testing, counseling and preparation of DWC Form 102; and b) up to \$3500 may be spent on plan monitoring, job seeking skills, job placement research and counseling. Also, for employees injured on or after January 1, 1994 who initiate rehabilitation benefits or services on or after January 1, 1998, the period of job placement in a rehabilitation plan may be up to 90 days where the plan exclusively uses the employee’s transferable skills and experience for direct placement. Under prior law the limit was a 60 day job placement.

The law change is intended to reduce unnecessary efforts and expenses associated with providing extra services to injured workers who are job ready. By eliminating the too-short time period for performing direct placement services and allowing a little more time, via flexibility in the dollar

²⁹ See 8 CCR Sections 10122, 10125.2, 10125.3, 10126, 10127, 10131.1, 10132, 10132.1, 10133.1 and 10133.3.

caps on placement activities, more productive time will be spent on directly placing the injured worker in an appropriate new job. This can reduce the amount of dollars spent on vocational rehabilitation services and return workers sooner to productive employment.

As part of the administrative reorganization of the DWC, staff were distributed to some district offices that previously did not have a rehabilitation consultant on site. These additions in Anaheim, Riverside and Salinas provide more efficient use of rehabilitation staff and better service to the community.

DWC Disability Evaluation

The **Disability Evaluation Unit** recommends permanent disability ratings by assessing physical and mental impairments. The evaluations are used by judges, injured workers, and workers' compensation insurance administrators to provide permanent disability benefits.

Passage of reform legislation in 1989 established a new method for determining permanent disability through reliance on reports issued by qualified medical evaluators selected by the Industrial Medical Council. Under the law, the Disability Evaluation Unit is expected to prepare summary evaluations of permanent disability within twenty days of receipt of employer-employee forms and the qualified medical evaluator's report. This program was revamped during the 1993 reform. Most of the summary ratings are done for workers who are not represented by an attorney. Written consults are also requested by parties to workers' compensation cases who seek a formal rating of medical evaluations submitted by physicians.

During 1998 the Disability Evaluation Unit staff received nearly 39,548 requests for written consultations on medical reports, and 33,518 unrepresented summary requests. Another 5,554 cases came in with requests for represented summary ratings and other reports. This total of 78,620 incoming files was a decrease of 2.2 percent from the 1997 incoming caseload. (Chart 45)

Unit staff issued a total of 110,472 ratings during 1998, an increase of 3.5 percent over 1997. Of these, 58 percent were written consults and nearly 35 percent were unrepresented summary ratings. (Chart 46) The unit also assisted parties to workers' compensation proceedings by doing 29,021 verbal consultations.

In 1998, 1,737 ratings were appealed through a request for reconsideration. This accounts for 1.6 percent of all cases rated. In contrast during 1997, 2,095 cases or 2.0 percent were submitted for reconsideration.

DWC Audit and Enforcement

The **Audit and Enforcement Unit**, formed under the 1989 reform legislation, promotes prompt payment of workers' compensation benefits to injured workers. The unit audits insurance companies, self insured employers, and third-party administrators to ensure that they have met their obligations under the Labor Code and the Administrative Director's regulations. By assessing penalties and ordering that unpaid compensation be paid, this unit within DWC ensures that proper benefits are delivered accurately and in a timely manner.

Penalties range from \$100 to a maximum of \$5000 per violation. The amount of each penalty is determined by considering the gravity of the violation and the good faith of the claims administrator, as well as the frequency and history, if any, of violations. Audit regulations clarify the responsibilities of claims administrators and specify in detail how mitigating and exacerbating factors are applied to determine the penalty amounts. In addition to these penalties, a civil penalty of up to \$100,000 may be assessed if willful improper claims handling is found to constitute a business practice.

On April 1 of each year the Audit Unit issues an annual report to the Legislature covering the prior calendar year's results. In 1998 the Audit Unit completed 34 audits and reviewed 6,493 cases. Twenty-nine of the audit subjects were selected randomly, while the remaining five were selected based upon results from a prior audit or following an investigation of claims handling practices resulting from complaints received by DWC.

Of the 6,493 cases audited in 1998 by compliance officers, 2,425 were cases in which indemnity benefits were paid or were expected to be paid, 2,283 were medical only cases, 1,621 were cases in which the employer or insurer denied all liability, 108 were selected based on complaints, and 56 were designated as "additional" files. (These are generally companion files to those selected for audit in which it was necessary to audit the companion file to determine if all benefits were provided in the file selected.)

In the 1998 audits, the unit issued 7,774 administrative penalty assessments totaling \$1,069,285. Unpaid compensation was found in 423 claims and totaled \$356,787, an average of \$843 per file in which there was unpaid compensation.

Most assessments were found in the indemnity, complaint, and denied claims. Very few penalty assessments were found in medical only claims, and the time involved in reviewing them was minimal. As in prior years, the most frequently assessed violations were for failure to issue or late or inaccurate issuance of a benefit notice to the injured worker, and for late or inadequate payment of compensation. Benefit notices are important for keeping injured workers informed of the status of their claim, and failure to provide benefit notices increases the chance of unnecessary litigation. The average number of penalty citations per insurer audited was 229, and the average amount in penalty assessments per audit was \$31,454. Penalties carried an average assessment of \$138.

In 1998 unpaid compensation was found in 16.3 percent of indemnity and complaint cases reviewed. For every claim audited in 1998, 1.2 violations were found and penalized by auditors. Late first temporary disability payments were found in 20 percent of all indemnity files reviewed, compared to 13 percent of files reviewed in 1997. Among cases where liability was denied by claims administrators, auditors found no support for the denial in 1.6 percent of cases, by far the largest percentage since the audit program began.

A record amount in penalties for one audit was assessed in 1998 against a large retail grocery chain headquartered in Los Angeles, which was assessed 1,179 penalties totaling \$217,530. The non-random audit of this self administered, self insured employer was initiated in 1997 and

revealed \$106,017 in unpaid compensation in 76 claims. The audit was conducted after a 1996 complaint investigation.

Also in 1998, the Audit Unit asked the Administrative Director to issue an Order to Show Cause as to why three civil penalties of \$100,000 each should not be assessed against Fremont Compensation Insurance Company pursuant to Labor Code Section 129.5(d). The complaint alleges that three separate adjusting locations of the company have engaged in practices that would warrant imposition of civil penalties.

Increased staffing for the Audit Unit is included in the governor's 1999-2000 budget. The full audit report is available on-line at the Division of Workers' Compensation Web site:

<http://www.dir.ca.gov/DWC/dwcrep.htm>

DWC Audit Unit Annual Summary for 1995-1998

	1995	1996	1997	1998
Total number of audits completed during year	64	55	39	34
Number of nonrandom audits	7	7	10	5
Number of cases audited in completed audits	16,261	12,436	8,504	6,493
Cases audited per audit	254	226	218	191
Number of penalty assessments	8,481	9,030	9,324	7,774
Amount of penalty assessments (after mitigation)	\$1,099,610	\$1,164,120	\$1,269,370	\$1,069,285
Average total assessed per audit	\$17,181	\$21,166	\$32,548	\$31,450
Average net penalty assessment	\$130	\$129	\$136	\$138
Number of indemnity cases audited	5,918	4,461	3,110	2,425
Number of indemnity cases with unpaid compensation	728	579	508	423
Comp. due cases as % of indemnity cases reviewed	12 %	13 %	16 %	17 %
Total unpaid compensation	\$644,943	\$473,961	\$455,401	\$356,787
Average amount unpaid per case with unpaid comp.	\$886	\$819	\$896	\$843
Late first TD indemnity payments	591	564	416	475
Late first TD payments as % of indemnity cases audited	10 %	13 %	13 %	20 %
Unsupported denials of liability	45	23	22	26
Lack of investigation	10	24	12	21
Unsupported denials as % of denials audited	1.1 %	0.8 %	1.1 %	1.6 %
Lack of investigation as % of indemnity files	0.2 %	0.5 %	0.4 %	0.9 %
Number of appeals	4	3	6	3
Penalty citations per audit	132.5	164.2	239.1	228.6
Penalty citations per case audited	0.52	0.73	1.10	1.20

DWC Claims

The **Claims Unit** authorizes payment of workers' compensation benefits to injured workers under two special programs.

Uninsured Employers Fund

Claims are paid from the Uninsured Employers Fund (UEF) when illegally uninsured employers fail to pay workers' compensation benefits awarded to their injured employees by the Workers' Compensation Appeals Board. Certain steps must be taken before and after issuance of an award in order to receive benefits from the UEF. Guidelines are available from DWC's Information and Assistance Unit.

In 1997 there were 1,366 cases opened before the UEF. In 1998 the number of new cases had fallen to 1,012. (Chart 47) Total benefits paid out during 1997 by the UEF were \$19.5 million, while in 1998 there was a slight reduction to \$19.3 million. (Chart 48) The UEF receives revenue from uninsured employer recoveries and penalties, inmate without dependent payments, and escheats. In 1997 collections by the Claims Unit came to \$4.4 million, while in 1998 the amount was up to \$5.3 million. (Chart 49)

Subsequent Injuries Fund

The Subsequent Injuries Fund (SIF) is a source of additional compensation to injured workers who already had a disability or impairment at the time of injury. For benefits to be paid from the SIF, the combined effect of the injury and the previous disability or impairment must result in a permanent disability of at least seventy percent. The fund enables employers to hire disabled workers without fear of being held liable for the effects of previous disabilities or impairments. SIF benefit checks are issued by State Compensation Insurance Fund after issuance of an award by the Workers' Compensation Appeals Board and upon authorization by DWC's Claims Unit.

In 1997 there were 511 new cases brought to the SIF, and in 1998 there were 482 cases. Total benefit payout for calendar year 1997 was \$6.3 million and for 1998 was \$7.6 million. The SIF collects revenue from cases in which there are occupational fatalities without any payments to dependents. In 1997 the unit collected \$2.7 million from such sources, while in 1998 the amount was slightly higher, \$2.9 million.

DWC Legal

With passage of hundreds of pages of new law in 1993 and subsequent years, the **DWC Legal Unit** was busy drafting and coordinating new regulations to interpret and clarify the statutory intents of reform. The following is a list of topics of all the regulations issued by the division since 1993 to implement the law:

- 24-hour Care Pilot Projects
- Certification Standards for Health Care Organizations
- Employee Selected Treating Physician
- Primary Treating Physician

- Medical Fee Schedule
- Payment for Medical Treatment
- Medical-Legal Fees and Reports
- Fees for Interpreter Services
- Benefit Notices
- False and Misleading Advertising
- Document Copy and Electronic Transaction Fees
- Audit Procedures
- Claim Forms
- Vocational Rehabilitation
- Permanent Disability Summary Rating Process
- Fraud Regulations
- WCAB Regulations
- Utilization Review Standards
- Collective Bargaining Agreements in the Construction Industry
- Information and Assistance Programs

Ethics Advisory Committee

The Ethics Advisory Committee is responsible for reviewing and monitoring complaints of misconduct filed against workers' compensation administrative law judges. The committee's responsibilities are set forth in Title 8, California Code of Regulations, Sections 9720.1 through 9723. The committee was established in late 1995 and held its first meeting in 1996. Composed of nine members appointed by the Administrative Director, the committee meets periodically to review complaints and make recommendations regarding whether formal investigation by the Administrative Director's staff is warranted.

During 1998 the committee received a total of 18 complaints concerning current DWC employees. This is a decline from the 33 complaints filed during 1997. As of the last committee meeting in November 1998, 16 of the 18 complaints had been presented to the committee for review and recommendation, with the other two held over to the first scheduled meeting of 1999. There were four complaints filed in December 1997 that were first heard during 1998.

In 8 of the 16 complaints reviewed, the committee found insufficient showing of ethical misconduct to warrant further investigation. The committee recommended formal investigation in 8 cases. Of these, 7 were finalized during 1998. In the cases carried over from 1997, two were found to warrant investigation. The complete committee report may be obtained from the DWC Administrative Director.

Petitions for Change of Physician

In 1993 the Legislature enacted Labor Code Section 4062.9, which provides that the conclusions of an injured worker's treating physician are presumed to be correct regardless of the conclusions found in a later comprehensive medical examination by a qualified medical examiner. An opposing party can rebut this presumption if a preponderance of medical opinion is provided indicating a different level of impairment. The statute has been interpreted as designed to expedite the resolution of medical issues by reducing the number of physicians involved in a case, particularly with respect to medical level evaluations.³⁰

In the Minniear case, the Workers' Compensation Appeals Board found that the presumptions of Labor Code Section 4062.9 applied to all medical issues, not just those of impairment, increasing the standing of the injured worker's treating physician.³¹ Because Minniear made it more difficult to challenge a treating physician's conclusions regarding an employee's injuries, employers and insurers have increased their efforts to change the treating physician when it is first believed that the physician's conclusions may be favorable to the employee and adverse to the insurer.

The Legal Unit is responsible for considering requests for change of physician. During 1997 a total of 637 petitions were filed for orders requiring an employee to select an employer-designated physician. In 1998 the number of requests had grown dramatically to 948, an increase of 49 percent. (Chart 50) The growth in petitions may have some impetus from defendants seeking to remove primary treating physicians, with their presumption of correctness, from a case prior to the filing of a permanent and stationary report. Some of the petitions also allege improper or untimely reporting of the treating physician. The numbers of cases seeking this administrative remedy may have increased following DWC presentations on the remedy at the division's annual educational conference for claims administrators.

Division attorneys handling these petitions estimate that approximately 25 to 30 percent of the petitions filed are dismissed for technical defects, requiring less staff time than those petitions which get a full review. Dismissed petitions require an average 30 minutes of staff time. Petitions that are granted or denied after full review involve approximately two hours of staff time. Such review includes the injured worker's medical file, review of opposing written arguments, analysis of the timeframes to determine whether proper procedures have been followed, and legal research for complex issues related to medical treatment. Complex or significant case records can dramatically increase the amount of time needed to review and make a determination—some files require up to four hours for completion.

Reconsideration of Ratings

The Legal Unit received and processed approximately 1,737 requests for reconsideration of summary ratings in 1998. Including cases left over from prior years, 1,353 requests were denied, 520 were granted, and 402 were closed when cases went before the WCAB. The volume of

³⁰ See, for example, Ralph's Grocery Co. v Workers' Compensation Appeals Board (1995) 38 Cal. App 4th 820,831.

³¹ Minniear v. Mt San Antonio Community College District (1996) 61 CCC 1055.

requests has decreased significantly since the high point of more than 4000 requests for reconsideration in 1995.

Other DWC Initiatives

Construction Industry Collective Bargaining Agreements

Pursuant to Labor Code Section 3201.5, the division oversees the construction carve-out program.³² The program allows unions and employers engaged in construction to create alternatives to the traditional, state-supervised workers' compensation system. The law allows collective bargaining agreements to establish alternative dispute resolution processes that bypass the state workers' compensation administrative law judges, and allows establishment of exclusive lists of medical providers and examiners for injured workers within a specified construction work force. The Administrative Director reviews all collective bargaining agreements negotiated under the provisions of this bill.

Through 1998, the Division of Workers' Compensation had issued letters of eligibility to the parties of thirteen collective bargaining agreements. Five of the agreements may be viewed as project labor agreements, which cover all construction employees, regardless of the employer, who work at any time on the covered project. The two original project agreements covered massive reservoir construction projects lasting for several years and employing different workers—and different numbers of workers—during different phases of the construction. Other large project labor agreements now cover the construction of the National Ignition Facility at Lawrence Livermore National Labs, and the Inland Feeder project of the Metropolitan Water District of Southern California. The other agreements between unions and contractors are of two types: the first is a single employer and a union engaged in construction; the second involves a construction trade union and multiple employers all participating in a collective bargaining agreement. Building trades involved in these projects include electricians, painters, laborers, pipe trades and carpenters unions.

In 1998 approximately 9500 employees were covered by the twelve current agreements.

Carve-out Participants

Twelve programs are certified as eligible and were active during 1998:

- An agreement between the District Council of Painters No. 36 and the Los Angeles County Painting and Decorating Contractors Association. Each contractor chooses whether to sign the master carve-out agreement.
- An agreement between the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry, Local Union No. 342 and Cherne Contracting Corporation for the construction of an oil refinery.
- An agreement between the Building and Construction Trades Council of Alameda County and Parsons Constructors, Inc. This is a project labor agreement covering all contractors and subcontractors on the \$1.2 billion, multi-year National Ignition Facility at Lawrence Livermore National Laboratory.

³² Established by Senate Bill 983 (1993).

- An agreement between the California Building and Construction Trades Council and the Metropolitan Water District of Southern California. This is a project labor agreement covering all contractors and subcontractors on the \$1.1 billion, multi-year Inland Feeder Project.
- An agreement between the Southern California District Council of Laborers and four different multi-employer groups: the Associated General Contractors of California, Inc.; the Building Industry Association of Southern California, Inc.; the Southern California Contractors' Association; and the Engineering Contractors' Association. Each contractor chooses whether to sign the master carve-out agreement.
- An agreement between the Contra Costa Building and Construction Trades Council, AFL-CIO, and the Contra Costa Water District. This is a series of three project labor agreements covering all contractors and subcontractors on a \$200 million, two and one half year dam project called the Los Vaqueros Project.
- An agreement between TIMEC Co., Inc., and TIMEC Southern California, Inc., and the International Union of Petroleum and Industrial Workers.
- An agreement between the Southern California Pipe Trades District Council No. 16 and a multi-employer group called the Plumbing and Piping Industry Council, Inc. Each contractor chooses whether to sign the master carve-out agreement.
- An agreement between the Southern California District of Carpenters and its 19 local unions and six different multi-employer groups consisting of about 1000 contractors. Each contractor chooses whether to sign the master carve-out agreement.
- An agreement between the District Council of the International Brotherhood of Electrical Workers and its 20 local unions and a multi-employer group called the National Electrical Contractors Association, consisting of about 300 contractors. Each employer chooses whether to sign the master carve-out agreement.
- An agreement between the California Building and Construction Trades Council, AFL-CIO, and the Metropolitan Water District of Southern California. This is a project labor agreement covering all contractors and subcontractors on a \$2 billion, five-year reservoir construction project in Hemet, California.
- An agreement between the Los Angeles Building and Construction Trades Council, AFL-CIO and Cherne Construction – ARCO.

DWC Research and Evaluation

The Division of Workers' Compensation, as well as other policy makers with responsibility in this area, needs to acquire accurate, credible information concerning the operation of the workers' compensation system, in order to effectively carry out its responsibilities under the law. The **Research and Evaluation Unit**, formed in 1992 to assist the Administrative Director, is designed to fill this need.

The unit is responsible for planning, implementing and evaluating several special projects. Since 1993 the Research Unit:

- Assisted in the redesign and publication of a revised Official Medical Fee Schedule.
- Managed and coordinated the 24-hour health care pilot program.
- Worked on development and analysis of an inpatient hospital fee schedule.
- Tracked disputed medical claims payments.
- Began assembling a workers' compensation research library and archive.
- Designed and implemented automated information services through an 800 number.
- Researched, developed and began implementation of a World Wide Web information system for DWC.
- Provided assistance to management, DIR policy makers, legislative staff, Commission on Health and Safety and Workers' Compensation on special studies, annual and periodic reports.

The unit is also involved in the legislatively mandated development of a workers' compensation information system designed to assist the department in efficiently managing the system, to facilitate evaluation, to assist in measuring the adequacy of benefits for injured workers and their dependents, and to provide statistical data for research in other areas.

The Workers' Compensation Information System

Background

The California Legislature enacted sweeping reforms to California's workers' compensation system in 1993. The reform legislation was preceded by a vigorous debate among representatives of injured workers, their employers, insurance companies, and medical providers. All parties agreed that changes were due, but they could not reach agreement on the nature of the problems to be corrected nor on the likely impact of alternative reform proposals. One barrier to well-informed debate was the absence of comprehensive, impartial information about the performance of California's workers' compensation system.

Foreseeing that debate about the strengths and weaknesses of the system would continue, the Legislature directed the Division of Workers' Compensation to put together comprehensive information about workers' compensation in California. The result is the WCIS – the Workers' Compensation Information System. The WCIS has been in development since 1995, and its design has been shaped by a broad-based advisory committee. The WCIS has four main objectives:

- help DWC manage the workers' comp system efficiently and effectively,
- facilitate the evaluation of the benefit delivery system,
- assist in measuring benefit adequacy, and
- provide statistical data for further research.

Components of the WCIS

The WCIS encompasses three major components. The core of the system will be standard data on every California workers' compensation claim. Much of this data has historically been collected in paper form: employers' and physicians' first reports of injury, benefit notices, and

the like. Beginning in 2000, standard data will be transmitted to the WCIS by EDI. EDI will make it feasible to compile and analyze the reports, and to understand the information they contain.

The WCIS will also use information from DWC's existing case tracking system. DWC has extensive computerized files on adjudicated cases and on claims that have been submitted for disability evaluation or for review of vocational rehabilitation plans. This information will be linked with EDI data to help shed light on the differences between adjudicated and non-adjudicated cases.

Finally, WCIS will conduct periodic surveys of a sample of injured workers, their employers, and medical providers. These surveys will supplement the standard data, and allow WCIS to address a wide variety of policy questions.

Status

The first phase of the WCIS has recently been completed, and data has begun to be accepted on a pilot basis. WCIS regulations have been approved by the state Office of Administrative Law effective November 5, 1999.

The new regulations require all California claims administrators to begin electronic transmission of First Reports of Injury by March 1, 2000 and electronic versions of benefit notices by July 1, 2000. Claims administrators with significant and documented difficulties with making the change can apply for a one-time variance which would delay reporting until December 31, 2000.

DWC Managed Care

The Workers' Compensation Health Care Organization (HCO) program was enacted as part of the 1993 workers' compensation reform legislation. The HCO program is designed to help lower employers' workers' compensation costs and assure quality of care for injured workers by bringing managed care techniques into the workers' compensation arena.

Under the direction of DWC's medical director, the **Managed Care Unit** reviews applications from health care organizations and certifies them for the delivery of managed care services under California workers' compensation law.

Three types of organizations are eligible to apply for HCO certification: full service Knox-Keene health care service plans licensed by the state Department of Corporations (HMOs); disability insurers licensed by the state Department of Insurance; or Workers' Compensation Health Care Provider Organizations (WCHCPOs).

Self insured employers and insurers may contract with a certified HCO to provide medical and disability management services to injured workers. Employees must be provided a choice of at least two HCOs, and an open enrollment process is required (Title 8, California Code of Regulations, Sections 9779.3 and 9779.4). HCOs must include a comprehensive health care delivery system, including assignment of primary treating physician, consultation and referral, inpatient hospital care, emergency services, diagnostic facilities, home health services, a quality assurance and medical case management system, return to work coordination, consultation on health and safety, and data reporting.

Employees offered a choice of HCOs must also be given the option to pre-designate their own personal physician. Once enrolled in an HCO, those services and providers must be used for between 90 and 365 days after an injury or illness occurs.

At the start of 1998 nine HCOs were certified. During the year three more were certified and four certified HCOs withdrew from the program. By the end of 1998 there were eight certified HCOs in the state. Six are WCHCPOs, one is an HMO and one a disability insurer.

For a number of reasons, the HCO program was slow to develop. Complex enrollment requirements and other disincentives combined with significant reductions in workers' compensation premiums kept interest in the program relatively low. Financial uncertainties among several large health care companies who owned HCOs caused some of them to withdraw from the program. More recently, there has been renewed interest—four new HCOs were approved for operation in the first half of 1999.

Administration of the HCO program is funded through an enrollment fee paid by certified HCOs and applicants. Under legislation passed in 1998 amending Labor Code Section 4600.7, future funding and a full repayment of the original start-up loan from the state general fund is assured by providing an additional per-enrollee surcharge over the next five to eight years. The revised funding mechanism went into effect with new DWC regulations in May 1999.

During 1998 the division released a patient satisfaction survey developed expressly for injured workers receiving medical care in the workers' compensation system. One of the first developed in the country for this specific audience, the survey will be used by HCOs and is available for use by employers, claims administrators or medical care providers.